

December 8, 1989

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
EXISTING POLICIES OR ORDINANCES CONCERNING
CABLE TELEVISION SERVICES WITHIN THE CITY

At the City Council meeting on November 20, 1989, in the course of considering Item 202, an ordinance amending a cable television franchise granted to Cox Cable, Councilmember Henderson asked that the item be continued to December 11, 1989, for a report on existing City policies or ordinances concerning cable television services in the City. This report responds to Mr. Henderson's request.

Two documents are attached. The first is Council Policy 700-28, setting forth the criteria for "less-than-full-service-area" cable service franchises. The second is a copy of amendments to the California Government Code which directly address the "additional franchise" issue and, when effective, will contradict the Council Policy.

Council Policy 700-28, dated April 6, 1972, allows the granting of cable franchises to subdivision developers who wish to provide cable service in their developments before the existing, "major" franchise grantee is prepared to do so. The policy acknowledges the desirability of, and subdivision developers' interest in, eliminating unsightly rooftop antennae and sets cable system standards intended to ensure quality service to customers. The Council Policy requires the applicant to show it has the economic and technological capability for providing a full service cable system that is a separate legal entity apart from the developer's subdivision projects. The developer's system must be technologically compatible with the existing franchise grantee's system. The policy further requires the developer to sell the system to the existing franchise grantee at the end of five years.

Council Policy 700-28 was designed to cover a situation in which a new residential development was ready for occupancy, but

the cable system franchised for the area was not yet ready to serve. The policy contemplates that the developer would build a system to meet City standards and to be integrated into the existing system within five years. Granting of such a franchise is no longer permitted under state law.

Assembly Bill No. 543, effective January 1, 1990, establishes a "comprehensive" policy concerning cable and amends certain sections of the California Government Code dealing with television franchises. Government Code section 53066 authorizes cities to grant franchises and prohibits the operation of any cable system without a franchise. Government Code section 53066.3 permits a city to grant "an additional . . . franchise in an area where a franchise has already been granted to a cable television operator," but only after a public hearing at which certain factors have been considered. Those considerations include (1) economic and technical capabilities; (2) aesthetic and economic impacts on the service area; and (3) other general impacts and "societal interests." The City is allowed under the amendments to impose additional terms and conditions as might be appropriate and must make a final determination regarding the additional franchise within six months of the application (barring unreasonable delay by the applicant). The legislation, as adopted (Stats. 1989, c. 700, Sec. 3), concludes:

(d) Any franchise to provide cable television service in an area already franchised and served by an existing cable operator shall require the franchisee to wire and serve the same geographical area, and shall contain the same public, educational, and governmental access requirements that are set forth in the existing franchise.

¶Emphasis added.σ

While the inclusion of subdivision (d) no doubt comes as a result of cable industry lobbying, it nevertheless reflects fundamental fairness. One of the main objectives of our cable franchises is to assure that San Diego becomes a geographically "wired city." Current franchisees are required to build out their systems to include the whole city at a minimum service level. It is not fair to grant a franchise to build and operate a competing system unless the new franchisee is subject to the same rules. To do otherwise is to allow the new operator to "cream-skim" or "cherry-pick" the most promising areas and services while requiring the existing operator to (1) serve marginal or unprofitable areas and (2) provide marginal or unprofitable services.

CONCLUSION

In light of the recently adopted legislation, the City may grant cable franchises for parts of the City already served by existing cable systems. It may not, however, allow a new

franchisee to serve a smaller geographical area or provide lesser or less services than required of the operators of the existing systems. It may impose terms and conditions additional to those in the existing franchise, including a larger franchise fee.

Respectfully submitted,

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Attachments

RC-89-55